

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DIONNA D.,

Plaintiff,

v.

ACTING COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

Case No. 2:24-cv-01724-TLF

ORDER REVERSING AND
REMANDING DEFENDANT'S
DECISION TO DENY BENEFITS

Plaintiff filed this action under 42 U.S.C. § 405(g) for judicial review of defendant's denial of plaintiff's application for supplemental security income ("SSI") and disability insurance benefits ("DIB"). Pursuant to 28 U.S.C. § 636(c), Federal Rule of Civil Procedure 73, and Local Rule MJR 13, the parties have consented to have this matter heard by the undersigned Magistrate Judge. Dkt. 3. Plaintiff challenges the ALJ's decision finding that plaintiff was not disabled. Dkt. 6, Complaint.

Plaintiff filed applications for SSI and DIB in March 2019 alleging a disability onset date of March 7, 2019 (later amended to March 21, 2019). The date last insured for DIB was December 31, 2024. AR 13, 44, 181-88, 802. The applications were denied initially and upon reconsideration.

On January 19, 2021, ALJ M.J. Adams conducted a hearing. AR 39-68. On February 25, 2021, ALJ Adams issued a decision finding plaintiff not disabled. The Appeals Council declined the request for review and plaintiff filed an appeal to this

1 Court. AR 891-93. On September 7, 2022, this Court reversed and remanded the case
2 for further proceedings. *Dionna D. v. Comm’r of Soc. Sec.*, 2022 WL 4103404 (W.D.
3 Wash. Sept. 7, 2022).

4 On December 12, 2023, ALJ Cecilia LaCara conducted a second hearing. AR
5 827-55. On July 22, 2024, ALJ LaCara issued an unfavorable decision finding plaintiff
6 not disabled. AR 802-19. Plaintiff filed this appeal on October 22, 2024. Dkt. 6 at 3.

7 STANDARD OF REVIEW

8 Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner's
9 denial of Social Security benefits if the ALJ's findings are based on legal error or not
10 supported by substantial evidence in the record as a whole. *Revels v. Berryhill*, 874
11 F.3d 648, 654 (9th Cir. 2017) (internal citations omitted). Substantial evidence is “such
12 relevant evidence as a reasonable mind might accept as adequate to support a
13 conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (internal citations
14 omitted). The Court must consider the administrative record as a whole. *Garrison v.*
15 *Colvin*, 759 F.3d 995, 1009 (9th Cir. 2014). The Court also must weigh both the
16 evidence that supports and evidence that does not support the ALJ’s conclusion. *Id.*
17 The Court may not affirm the decision of the ALJ for a reason upon which the ALJ did
18 not rely. *Id.* Rather, only the reasons identified by the ALJ are considered in the scope
19 of the Court’s review. *Id.*

20 DISCUSSION

21 ALJ LaCara determined that plaintiff had the following severe impairments: back
22 disorder, obesity, depressive disorder, and anxiety disorder. AR 804. The ALJ found
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that plaintiff could perform light work as defined in 20 C.F.R. §§ 404.1567(b) and 416.967(b) with the following additional restrictions:

she can stand or walk in any combination for a total of 6 hours in an 8-hour workday; she can sit for 6 hours in an 8-hour workday; sit/stand option at will but she does not leave the workstation; she is limited to occasional climbing of ramps, stairs, ladders, ropes, scaffolds, stooping, kneeling, crouching, and crawling; she is limited to frequent balancing; she must avoid concentrated exposure to hazards; she is limited to simple routine tasks; she is limited to no interaction with the public (i.e. essential duties of the job does not require interaction with the public. However, incidental contact allowed); and she is limited to occasional superficial contact with coworkers.

AR 807. Based on hypotheticals posed to the Vocational Expert (VE) at the hearing, the ALJ concluded at step four that plaintiff could not perform her past work, but could work, instead, as an office helper; assembler, production; and inspector, hand packer. AR 819.

Plaintiff argues that the ALJ erred by improperly discounting her subjective symptom testimony and by improperly considering the medical opinion evidence. Dkt. 10 at 4, 13-16. The Commissioner contends that the ALJ reasonably evaluated plaintiff's testimony and the medical opinions. Dkt. 12 at 1, 6.

1. Medical evidence.

Plaintiff challenges the ALJ's assessment of the opinions of Dr. Tasmyn Bowes, Psy.D., Dr. David Widlan, Ph.D., and ARNP Aleksandr Torchilo. Dkt. 10 at 13-16.

Plaintiff filed the claim on March 25, 2019, so the ALJ applied the 2017 regulations. Under the 2017 regulations, the Commissioner "will not defer or give any specific evidentiary weight . . . to any medical opinion(s) . . . including those from [the claimant's] medical sources." 20 C.F.R. §§ 404.1520c(a), 416.920c(a). The ALJ must nonetheless explain with specificity how they considered the factors of supportability

1 and consistency in evaluating the medical opinions. 20 C.F.R. §§ 404.1520c(a)–(b),
2 416.920c(a)–(b).

3 The Ninth Circuit considered the 2017 regulations in *Woods v. Kijakazi*, 32 F.4th
4 785 (9th Cir. 2022). The Court held that under the 2017 regulations,

5 an ALJ cannot reject an examining or treating doctor's opinion as
6 unsupported or inconsistent without providing an explanation supported by
7 substantial evidence. The agency must “articulate ... how persuasive” it
8 finds “all of the medical opinions” from each doctor or other source, 20
C.F.R. § 404.1520c(b), and “explain how [it] considered the supportability
and consistency factors” in reaching these findings, *id.* § 404.1520c(b)(2).
Id.

9 **a. Dr. Tasmyn Bowes, Psy.D.**

10 On May 7, 2019, Dr. Bowes examined plaintiff and completed a psychological
11 evaluation. AR 430-44. Dr. Bowes opined that the following symptoms affect plaintiff's
12 ability to work: sadness, anhedonia, lack of energy/motivation, feelings of hopelessness
13 and worthlessness, social isolation, sleep disturbance, irritability, suicidal ideation, panic
14 attacks with agoraphobia, difficulties with concentration, and vague visual
15 hallucinations. AR 432. Dr. Bowes diagnosed major depressive disorder, recurrent,
16 severe with psychotic features (recently), panic disorder, and agoraphobia. *Id.*

17 Dr. Bowes opined marked limitations in the following basic work activities:
18 understand, remember, and persist in tasks by following detailed instructions; perform
19 activities within a schedule, maintain regular attendance, and be punctual within
20 customary tolerances without special supervision; communicate and perform effectively
21 in a work setting; maintain appropriate behavior in a work setting; and complete a
22 normal workday or workweek without interruptions from psychologically based
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1 symptoms. AR 433. Dr. Bowes opined moderate or mild limitations in all other work
2 activities and rated plaintiff's overall severity as marked. *Id.*

3 The ALJ found Dr. Bowes' opinion unpersuasive, except as to detailed
4 instructions, and stated the findings were unsupported by the corresponding evaluation
5 notes and were inconsistent with the overall medical record. AR 816. Specifically, the
6 ALJ found the marked limitations unsupported by the MSE results, noting that plaintiff
7 was within normal limits in every area of functioning except concentration. *Id.* The ALJ
8 also reasoned that Dr. Bowes' opined limitations were inconsistent with treatment notes
9 showing progressive improvement in symptoms; MSEs that primarily showing normal
10 mood and affect without cognitive deficits; and recent records showing symptoms as
11 well-managed with medication such that her primary goal in therapy was obtaining
12 housing. AR 816.

13 Plaintiff argues that the ALJ erred because the record does not show sustained
14 improvement in plaintiff's functioning and that MSEs in the record showing normal mood
15 and affect without cognitive impairment were consistent with Dr. Bowes' opinion. Dkt. 10
16 at 14.

17 **i. Supportability**

18 The ALJ contends that Dr. Bowes' opined marked limitations are unsupported by
19 the mostly normal MSE results. AR 816. Supportability is the extent to which a medical
20 source supports their opinion by explaining the relevant objective medical evidence.
21 *Woods*, 32 F.4th at 791-92.

22 The MSE was not the only objective medical evidence used in the evaluation –
23 Dr. Bowes also conducted a clinical interview, Beck's depression and anxiety
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inventories, and the Trails Making Tests. AR 430-33; *see also Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017) (clinical interview is an “objective measure”).

The ALJ’s decision does not provide reasoning about how the normal findings in memory, judgment, perception, and orientation would be in conflict with the marked limitations in work activities opined by Dr. Bowes. *See, e.g., Rule v. Saul*, 859 F.App’x 754, 754 (9th Cir. 2021) (explaining that evidence showing “[claimant’s] thought processes, memory, and concentration were within normal limits did not contradict [provider’s] conclusions that [claimant] was markedly impaired in her ability to maintain a schedule, communicate with others in a work setting, or plan independently”); *William B v. Saul*, 2020 WL 4318755, at *3 (E.D. Wash. July 27, 2020) (“Simply because Plaintiff did well on portions of the [MSE] does not negate the other abnormal findings, as well as [the provider’s] professional assessments.”).

Dr. Bowes also provided clinical findings and test results alongside the MSE to support her opinion: plaintiff’s depression and anxiety were both rated as severe on the Beck’s inventories and Dr. Bowes specifically noted that plaintiff’s panic attacks with agoraphobia limit her ability to show up for appointments, leave her house, and drive. AR 432. The ALJ erred by failing to explain how plaintiff’s mental status examinations contradicted Dr. Bowes’ findings and by overlooking the other objective medical evidence. The ALJ’s finding is not supported by substantial evidence.

ii. Consistency

The ALJ also found the marked limitations inconsistent with the longitudinal record. AR 816. The ALJ argues that Dr. Bowes did not have the benefit of reviewing treatment notes, which show progressive improvement in symptoms, and MSEs that

1 primarily show normal mood and affect without cognitive deficits. *Id.* The ALJ also notes
2 that the opinion is inconsistent with recent records showing plaintiff's symptoms are
3 well-managed with medication such that her primary goal in therapy was obtaining
4 housing. *Id.*

5 Consistency is the extent to which a medical opinion is consistent with the
6 evidence from other medical and nonmedical sources in the claim. *Woods*, 32 F.4th at
7 791-92. The defendant asserts that Dr. Bowes' opinion is inconsistent with mental
8 status examinations throughout the record that consistently reflect that plaintiff had no
9 cognitive impairment, her memory and judgment were intact, and she was well-groomed
10 and appropriately behaved. AR 434, 484, 503, 710, 718, 721, 738-39, 741-42, 744-45,
11 1186-87, 1192, 1202-03, 1209, 1215, 1325. But the same MSEs also describe plaintiff's
12 mood as "depressed," "frustrated," "anxious," "dysphoric," "okay," "preoccupied," and
13 "agitated," and plaintiff's affect is described as "full range," "mood congruent," "flat," and
14 "restricted." Plaintiff also reported having transient suicidal ideation on several
15 occasions. AR 584-85, 590, 633, 706, 714.

16 The ALJ's decision fails to provide reasoning as to how such examination results
17 are inconsistent with the opined limitations. The ALJ's consistency finding is not
18 supported by substantial evidence. See *Kristine S. v. Saul*, 2020 WL 3578048, at *10
19 (C.D. Cal. June 30, 2020) (finding ALJ improperly relied on "normal" or "unremarkable"
20 MSE findings when treatment notes as a whole reflected persistent symptoms); *Emily S.*
21 *v. Kijakazi*, 2023 WL 3805257, at *8 (N.D. Cal. June 1, 2023) (a claimant cannot have
22 "generally normal findings" if MSEs demonstrate consistent "mood and affect
23 disturbances" in line with her psychiatric diagnoses).

1 The ALJ also noted that the limitations opined by Dr. Bowes were inconsistent
2 with medical records showing progressive improvement in symptoms and successful
3 treatment with medication such that her focus at recent therapy appointments was
4 obtaining housing. AR 816. Plaintiff argues that the record shows no sustained
5 improvement, only that her symptoms waxed and waned over time. Dkt. 10 at 14. As
6 plaintiff has discussed, the record does not show sustained improvement in plaintiff's
7 conditions, and plaintiff's focus in therapy does not contradict the assessed limitations.
8 *Id.* The consistency finding is not supported by substantial evidence. The ALJ offers
9 several examples of plaintiff's improvement in her symptoms but failed to examine this
10 evidence in the broader context of plaintiff's impairment. *Ghanim*, 763 F.3d at 1164
11 (treatment records cannot be cherry-picked; the ALJ must consider a particular record
12 of treatment in light of the overall diagnostic record). An ALJ must interpret instances of
13 improvement "with an understanding of the patient's overall well-being and the nature of
14 her symptoms." *Garrison*, 759 F.3d at 1017.

15 In finding that plaintiff's mental health significantly improved and stabilized, the
16 ALJ emphasizes positive findings from treatment records and ignores documentation of
17 plaintiff's ongoing struggles during the same period. For example, the ALJ notes that
18 plaintiff was feeling better with an increased dose of Lamictal in June 2019. AR 811. Yet
19 the ALJ omits discussion of counseling intake forms from the same month which
20 indicate plaintiff was suffering intrusive negative thoughts, experiencing physical
21 discomfort associated with panic attacks, and having difficulty sleeping and
22 concentrating. AR 702.

1 Accordingly, the ALJ failed to provide a proper basis for discounting Dr. Bowes'
2 opinion.

3 An error that is inconsequential to the non-disability determination is harmless.
4 *Stout v. Comm’r, Soc. Sec. Admin.*, 454 F.3d 1050, 1054 (9th Cir. 2006). If the errors of
5 the ALJ result in a residual functional capacity (RFC) that does not include relevant
6 work-related limitations, the RFC is deficient and the error is not harmless. *Id.* at 1052,
7 1054; *see also Carmickle*, 533 F.3d at 1160; *Embrey v. Bowen*, 849 F.2d 418, 422-23
8 (9th Cir. 1988).

9 If Dr. Bowes opinions had been given full weight, the ALJ may have decided on a
10 more restrictive RFC. Therefore, the errors in crediting this opinion were not harmless.

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12 **b. Dr. David Widlan, Ph.D.**

13 Dr. David Widlan, Ph.D., evaluated plaintiff on June 19, 2019. AR 502-06. Dr.
14 Widlan’s report was based on a clinical interview, MSE, SSA forms, and two medical
15 records dated February 13, 2019, and March 8, 2019. AR 502. Plaintiff had difficulty
16 finding the office and arrived twenty minutes late to her appointment in an agitated
17 state. AR 502. She presented in a depressed mood, exhibited general dysphoria, and
18 had a restricted affect. AR 503. Dr. Widlan noted that plaintiff was unable to name the
19 governor or a current event and was unable to correctly identify states that bordered
20 Washington, demonstrating an impaired fund of knowledge. AR 504. Dr. Widlan also
21 found deficits in memory and concentration, noting that she struggled to maintain focus,
22 responded with a slow pace, and “clearly takes longer than an average-functioning
23 individual to complete ADLs.” AR 504-05.

1 Dr. Widlan opined that plaintiff could accept simple instruction from a supervisor,
2 but moderately complex tasks would be too difficult. AR 505. He found plaintiff to be
3 capable of navigating simple social stressors on a consistent and routine basis, but that
4 she would likely become overwhelmed by moderately novel stressors. *Id.* Dr. Widlan
5 stated that plaintiff would struggle to persist with adequate pace due to panic, and that
6 her proclivity for avoidant behavior would cause absenteeism. *Id.*

7 The ALJ found Dr. Widlan's opinion only moderately persuasive, determining that
8 the opinion was vague in terms of plaintiff's functional capabilities and, to the extent it
9 implied marked limitations, not entirely consistent with the longitudinal record. AR 817.

10 An ALJ may reject an opinion that does "not show how [the claimant's] symptoms
11 translate into specific functional deficits which preclude work activity." *Morgan v.*
12 *Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 601 (9th Cir. 1999); *see also Meanel v.*
13 *Apfel*, 172 F.3d 1111, 1114 (9th Cir. 1999) (holding that a statement that plaintiff would
14 have "decreased concentration skills" was too vague to be useful in the disability
15 determination).

16 Dr. Widlan failed to specify functional limitations in his opinion. For example, he
17 did not explain what level of performance is suggested by the statement that plaintiff
18 would "struggle to persist" or how much absenteeism would result from avoidant
19 behavior. AR 505, 817. The ALJ's reasonably found Dr. Widlan's opinion less
20 persuasive on this basis.

21 Plaintiff also criticizes the ALJ's discussion of discrepancies between plaintiff's
22 presentation at her evaluations with Dr. Bowes and Dr. Widlan but fails to identify any
23 error made by the ALJ. Dkt. 10 at 15-16. The Court need not address this discussion, as
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any potential error would be harmless. *Carmickle v. Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1162 (9th Cir. 2008) (although an ALJ erred on one reason he gave to discount a medical opinion, “this error was harmless because the ALJ gave a reason supported by the record” to discount the opinion).

c. Aleksandr Torchilo, ARNP

The ALJ found the opinion of ARNP Torchilo generally persuasive. AR 815. ARNP Torchilo found plaintiff to have mild to moderate limitations overall, with moderate limitations in the areas of understanding and remembering detailed instructions, performing activities within a schedule, and adapting to normal hazards. AR 793, 795-96. ARNP Torchilo also noted that plaintiff would have episodes of deterioration or decompensation with increased anxiety and panic due to work-related stressors. AR 797. The ALJ found this portion of the opinion less persuasive, reasoning that it was not completely supported by the medical evidence. AR 816.

The ALJ cited plaintiff’s significant improvement with treatment and reasoned that plaintiff was reportedly babysitting her three grandchildren for one hour per day even when she complained of disabling anxiety. *Id.* The ALJ also noted that plaintiff reported to ARNP Torchilo that she had the ability to manage her anxiety before it escalates. *Id.*, AR 739.

Plaintiff argues that her ability to passively watch her grandchildren for an hour at a time is not inconsistent with ARNP Torchilo’s opinion about how she could be expected to respond to the pressures and expectations of a work setting. Dkt. 10 at 16. Plaintiff then concludes that the ALJ’s finding was not supported by substantial evidence. *Id.*

1 Plaintiff's does not identify a limitation that the ALJ should have included in her RFC
2 if ARNP Torchilo's assessment had been properly evaluated; the Court finds that
3 plaintiff has failed to meet her burden of showing that the ALJ committed harmful error.
4 *See Valentine v. Comm'r of Soc. Sec. Admin.*, 574 F.3d 685, 692 n.2 (9th Cir. 2009).

5 **2. Plaintiff's statements regarding symptoms and limitations**

6 Plaintiff challenges the ALJ's assessment of her subjective symptom testimony.
7 Dkt. 10 at 4-13.

8 Plaintiff testified at the 2024 hearing that depression causes her to have no
9 energy, so she sleeps a lot. AR 836-37. She described being easily overwhelmed and
10 she starts to feel flustered and panicky "when something gets to be too much" for her.
11 AR 837. She has difficulty staying in her room with the door closed, going into grocery
12 stores, and being around people arguing. AR 839. She gets flustered, can't think, and
13 starts to cry when her anxiety "really kicks in." *Id.*

14 At the 2021 hearing, plaintiff stated that her attitude was up and down, and she
15 was becoming very unpredictable. AR 49. She also testified that she struggles to
16 concentrate and can lose focus on what she's doing when she hears people talking. AR
17 55. When she has panic attacks, she gets hot, feels like she can't breathe, and starts
18 crying. AR 53.

19 In a function report dated April 29, 2019, plaintiff stated her ability to work was
20 limited because her panic attacks and anxiety can happen at any time, and depression
21 makes it hard to get out of bed and be around people. AR 235. She stated that she
22 spends time with family a few times per month, visits her son's house to babysit daily,
23 and that she can generally go out alone unless she is having a panic attack, or her
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1 anxiety is high. AR 238-39. Plaintiff wrote that her anxiety and depression affect her
2 hearing, completing tasks, concentration, understanding, and following instructions. AR
3 240. She has difficulty handling stress and hates change. AR 241.

4 The ALJ found that plaintiff's medically determinable impairments could
5 reasonably be expected to cause some of her symptoms, however, her statements
6 considering the intensity, persistence, and limiting effects of these symptoms were not
7 entirely consistent with the medical evidence and other evidence in the record. AR 809.
8 Plaintiff only challenges the ALJ's assessment of her mental health symptom testimony.
9 See Dkt. 10 at 2-13. Plaintiff alleges that the ALJ failed to give specific, clear, and
10 convincing reasons supported by substantial evidence for discounting her allegations
11 about the impact of her impairments on her ability to sustain work activity. Dkt. 10 at 2.

12 The ALJ's determinations regarding a claimant's statements about limitations
13 "must be supported by specific, cogent reasons." *Reddick v. Chater*, 157 F.3d 715, 722
14 (9th Cir. 1998) (*citing Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9th Cir. 1990)). In
15 assessing a Plaintiff's credibility, the ALJ must determine whether plaintiff has
16 presented objective medical evidence of an underlying impairment. If such evidence is
17 present and there is no evidence of malingering, the ALJ can only reject plaintiff's
18 testimony regarding the severity of his symptoms for specific, clear, and convincing
19 reasons. *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (*citing Lingenfelter v.*
20 *Astrue*, 504 F.3d 1028, 1036 (9th Cir. 2007)).

21 **a. Improvement with Treatment**

22 The ALJ found that plaintiff's allegations of chronic depression and anxiety that
23 have only minimally improved with treatment were inconsistent with the medical
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1 evidence, which indicates improvement and overall stability in mental health with
2 medication adjustments. AR 810. Plaintiff argues that the ALJ's finding is not supported
3 by substantial evidence because any improvement or stability she achieved with
4 medication was limited and not sustained. Dkt. 10 at 4.

5 Evidence of medical treatment successfully relieving mental health symptoms
6 can undermine a claim of disability. See 20 C.F.R. § 404.1529(c)(3)(iv) -(vi); *Wellington*
7 *v. Berryhill*, 878 F.3d 867, 876 (9th Cir. 2017). Yet, without finding plaintiff's condition
8 improved such that her symptoms were no longer as limiting as claimed, this was an
9 insufficient basis to reject her testimony. "That a person who suffers from severe panic
10 attacks, anxiety, and depression makes some improvement does not mean that the
11 person's impairments no longer seriously affect her ability to function in a workplace."
12 *Holohan v. Massanari*, 246 F.3d 1195, 1205 (9th Cir. 2001).

13 As discussed above, the ALJ offers several examples of plaintiff's improvement
14 in her symptoms but failed to examine this evidence in the broader context of plaintiff's
15 impairment. *Ghanim*, 763 F.3d at 1164 (treatment records cannot be cherry-picked; the
16 ALJ must consider a particular record of treatment in light of the overall diagnostic
17 record). An ALJ must interpret instances of improvement "with an understanding of the
18 patient's overall well-being and the nature of her symptoms." *Garrison*, 759 F.3d at
19 1017.

20 The ALJ emphasizes positive findings from treatment records and ignores
21 documentation of plaintiff's ongoing struggles during the same period. For example, the
22 ALJ notes that plaintiff was feeling better with an increased dose of Lamictal in June
23 2019. AR 811. Yet the ALJ omits discussion of counseling intake forms from the same
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1 month which indicate plaintiff was suffering intrusive negative thoughts, experiencing
2 physical discomfort associated with panic attacks, and having difficulty sleeping and
3 concentrating. AR 702.

4 The ALJ focuses on an instance in October 2019 where plaintiff endorsed a more
5 stable mood and generally less anxiety and irritability. AR 811 (citing AR 748). However,
6 the ALJ failed to mention that at the same visit, plaintiff also told her provider that she
7 was spending most of the day in bed and had low energy and poor focus. AR 748.

8 The ALJ erroneously focused on isolated instances of improvement that did not,
9 “in fact, constitute examples of a broader development.” *Garrison*, 759 F.3d at 1018.
10 The record shows that treatment did not result in sustained medical improvement that
11 positively affected plaintiff’s ability to function in the workplace, and the ALJ’s
12 determination of improvement was not supported by substantial evidence.

13 **b. Noncompliance with Treatment**

14 The ALJ also noted that plaintiff was reportedly not taking her medication
15 consistently in March 2021, but that subsequent records showed mental health stability
16 with medication compliance. AR 811. Plaintiff argues that the ALJ ignored her reasons
17 for not taking her medication and again cherry-picked evidence of improvement with
18 compliance. Dkt. 10 at 10.

19 Plaintiff told her therapist on March 25, 2021, that she stopped taking her
20 medications because she had been experiencing panic attacks within 30 minutes of
21 taking them over the past two weeks. AR 1233. When she next spoke to her therapist
22 on April 29, 2021, she reported that her medication had been adjusted and had helped
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1 her anxiety. AR 1238. The ALJ cites this single incidence of treatment noncompliance
2 as a reason to discount plaintiff's symptom testimony. AR 812.

3 An inadequately explained failure to follow a prescribed treatment regimen can
4 serve as a valid reason to discount a claimant's testimony. *Fair v. Bowen*, 885 F.2d 597,
5 603 (9th Cir. 1989). An ALJ must consider the possible reasons for a claimant's failure
6 to comply with treatment before discounting a claimant's testimony on this basis. See
7 SSR 16-3p, 2017 WL 1580304, at *9 (Oct. 25, 2017). If the claimant has a good reason
8 for failing to comply with treatment, noncompliance is not a proper basis for rejecting the
9 claimant's testimony. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). The Ninth
10 Circuit has found mental illness to be a good reason for failing to take medication.
11 *Garrison*, 759 F.3d at 1018, n.24 ("we do not punish the mentally ill for occasionally
12 going off their medication when the record affords compelling reason to view such
13 departures from prescribed treatment as part of claimants' underlying mental
14 afflictions.").

15 Here, the record shows plaintiff's period of noncompliance was a result of her
16 anxiety disorder because she went off her medication when she began experiencing
17 panic attacks shortly after taking it. Therefore, the ALJ erred in discrediting plaintiff's
18 subjective testimony based on noncompliance with her medication.

19 **c. Plaintiff's Presentation at Appointments**

20 The ALJ also found plaintiff's allegations of "totally incapacitating depression and
21 anxiety" conflicted with notes that plaintiff generally presented to appointments in no
22 acute distress and was often noted to be cooperative and/or pleasant. AR 812. Plaintiff
23 asserts that reports of "no acute distress" in medical records are generally meaningless,
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1 and that the ALJ failed to connect the cited observations to specific pieces of plaintiff's
2 testimony. Dkt. 10 at 11.

3 Inconsistencies between a claimant's testimony and the objective medical
4 evidence can be a valid reason to discount the claimant's testimony. *Bray v. Comm'r of*
5 *Soc. Sec. Admin.*, 554 F.3d 1219, 1227 (9th Cir. 2009). However, district courts in this
6 circuit, including this Court, have questioned the applicability of notes of "no acute
7 distress" to chronic conditions. See, e.g., *Troy A. H. v. Comm'r of Soc. Sec.*, 2022 WL
8 336846, at *5 (D. Or. Feb. 4, 2022) ("it is questionable whether a chart note of "no acute
9 distress" is relevant to allegations of chronic symptoms."); *Richard F. v. Comm'r of Soc.*
10 *Sec.*, 2019 WL 6713375, at *7 (W.D. Wash. Dec. 10, 2019) (quoting Oxford English
11 Dictionary, acute (3d ed. Dec. 2011) ("Clinical findings of "no acute distress" do not
12 undermine Plaintiff's testimony. "Acute" means "of recent or sudden onset; contrasted
13 with chronic."").

14 The record shows plaintiff's psychological impairments are chronic. See AR 442
15 ("chronic history of depression, worsening anxiety"); 791 ("chronic symptoms [of
16 depression and anxiety] will wax and wane throughout client's life"). The fact that
17 plaintiff does not generally present in acute distress is not inconsistent with plaintiff's
18 testimony, and the ALJ erred by discounting her testimony on this basis.

19 It is also improper to find a claimant less than fully credible because she is noted
20 as pleasant and cooperative at appointments. *Forester v. Colvin*, 22 F. Supp. 3d 1117,
21 1124-25 (D. Or. 2014). "To hold otherwise would mean that a claimant need not be
22 believed unless the claimant acted in an agitated and disagreeable manner, an
23 anomalous result." *Childress v. Colvin*, 2014 WL 4629593, at *13 (N.D. Cal. Sept. 16,

2014). The ALJ does not explain, and the Court cannot discern, why plaintiff's testimony of severe depression and anxiety is inherently inconsistent with a pleasant and cooperative demeanor. *Gia M. P. v. Comm'r Soc. Sec. Admin.*, 2018 WL 4031606, at *5 (D. Or. Aug. 23, 2018) ("Plaintiff's demeanor and appearance do not necessarily undermine her contention that she suffers from depression and anxiety that prevent her from working full time."); *Patricia P. v. Comm'r of Soc. Sec.*, 2020 WL 7488814, at *4 (W.D. Wash. Dec. 21, 2020) ("The Commissioner points to a calm, pleasant, cooperative demeanor with doctors, but this does not contradict Plaintiff's testimony of internal anxiety.").

Plaintiff's pleasant and cooperative presentation at appointments is not a clear and convincing reason to discount her testimony. *Nicole N.-M. v. Comm'r, Soc. Sec. Admin.*, 649 F. Supp. 3d 1025, 1037 (D. Or. 2022) (plaintiff's pleasant demeanor was not a clear and convincing reason to discount her testimony where the ALJ failed to explain why the findings related to her demeanor undermined her symptoms).

d. Plaintiff's Focus at Counseling Sessions

The ALJ alleges that plaintiff's focus on obtaining housing demonstrates mental health stability such that the focus during therapy appointments was unrelated to any mental health symptoms, thus undermining plaintiff's symptom testimony. AR 815, 813. Plaintiff contends that her efforts to get assistance with tasks that overwhelmed her was not substantial evidence of mental health stability. Dkt. 10 at 11.

The ALJ did not include any discussion of context. AR 813, 1272-73. When plaintiff reestablished counseling with Sound in March 2023, she reported feeling overwhelmed by housing and transportation needs, and she asserts that when she gets

1 overwhelmed, she shuts down. AR 1262. Plaintiff's treatment plan developed at that
2 time includes an introduction to housing resources, but also states that the counselor
3 would help plaintiff develop advocacy skills to get her needs met and introduce plaintiff
4 to at least three stress management tools to reduce her shutdowns. AR 1169-70.

5 The inclusion of these interventions suggests that plaintiff's top goal was housing
6 because it caused her stress and exacerbated her pre-existing anxiety. As this Court
7 has stated, "discussion of ongoing psychological stressors is a perfectly reasonable
8 topic of discussion during mental health therapy." *Vivian L. v. Berryhill*, 2018 WL
9 6242488, at *5 (W.D. Wash. Nov. 29, 2018). Thus, the focus during therapy was not, as
10 the ALJ states, "unrelated to any mental health symptoms." AR 815.

11 Records in the following months also demonstrate that plaintiff was experiencing
12 ongoing symptoms of depression and anxiety. See, e.g., AR 1201-02 (plaintiff reported
13 low energy, staying in bed all day, lacking motivation in April 2023); 1208-09 (plaintiff
14 stated anxiety was still "pretty up there," struggling with ADLs and getting out of bed in
15 June 2023). These records provide the broader context in which to consider plaintiff's
16 counseling notes. When viewed in this context, plaintiff's focus on housing does not
17 demonstrate stability, rather, it indicates plaintiff was experiencing situational stressors
18 that exacerbated ongoing struggles with her mental health. Accordingly, plaintiff's focus
19 on obtaining housing was not a clear and convincing reason to reject her subjective
20 symptom testimony.

21 An error that is inconsequential to the non-disability determination is harmless.
22 *Stout*, 454 F.3d at 1054. If the errors of the ALJ result in a residual functional capacity
23 (RFC) that does not include relevant work-related limitations, the RFC is deficient and
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1 the error is not harmless. *Id.*; see also, *Carmickle*, 533 F.3d at 1160; *Embrey*, 849 F.2d
2 at 422-23. Here, plaintiff described limitations that, had the ALJ considered them, may
3 have resulted in a more restrictive RFC. Therefore, the ALJ's errors in evaluating her
4 testimony were not harmless.

5 **3. Whether the Court should reverse with a direction to award benefits.**

6 “The decision whether to remand a case for additional evidence, or simply to
7 award benefits[,] is within the discretion of the court.” *Trevizo v. Berryhill*, 871 F.3d 664,
8 682 (9th Cir. 2017) (quoting *Sprague v. Bowen*, 812 F.2d 1226, 1232 (9th Cir. 1987)). If
9 an ALJ makes an error and the record is uncertain and ambiguous, the court should
10 remand to the agency for further proceedings. *Leon v. Berryhill*, 880 F.3d 1041, 1045
11 (9th Cir. 2017). Likewise, if the court concludes that additional proceedings can remedy
12 the ALJ's errors, it should remand the case for further consideration. *Revels*, 874 F.3d
13 at 668. The Ninth Circuit emphasized in *Leon* that even when each element is satisfied,
14 the district court still has discretion to remand for further proceedings or for award of
15 benefits. *Leon*, 880 F.3d at 1045.

16 Here, plaintiff asks that the Court remand for an award of benefits based on the
17 ALJ's errors in evaluating the medical opinion evidence and plaintiff's subjective
18 testimony. Based on a review of the record, the Court concludes that the record is not
19 free from important and relevant conflicts, such as conflicts in the medical evidence.
20 Therefore, this matter should be reversed for further administrative proceedings,
21 including a de novo hearing, not with a direction to award benefits. See *id.*

22 **CONCLUSION**

23 Based on the foregoing discussion, the Court concludes the ALJ improperly
24 determined plaintiff to be not disabled. Therefore, the ALJ's decision is reversed and
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1 remanded for further administrative proceedings. On remand, the Commissioner must
2 conduct a de novo hearing, allow plaintiff to present additional evidence, re-evaluate the
3 medical opinion of Dr. Bowes, and re-evaluate plaintiff's statements about her
4 symptoms and limitations.

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6 Dated this 2nd day of July, 2025

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8 Theresa L. Fricke
9 United States Magistrate Judge
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